

December 3, 2015

Mr. Daniel A. Petalas
Acting General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: MUR 6982 (Project Veritas)

Dear Mr. Petalas:

On October 27, 2015, the American Democracy Legal Fund ("ADLF") filed a complaint against two employees of Project Veritas for violating provisions of the Federal Election Campaign Act of 1971 ("FECA") and Federal Election Commission ("FEC") regulations. The complaint filed in Matter under Review ("MUR") 6982 is filed against one "Jane Doe" in her capacity as an employee for Project Veritas and James O'Keefe in his role as "Founder and President" of Project Veritas. The complaint appears to indicate that a proper respondent in this matter is Hillary Clinton's campaign.

Because Project Veritas and its agents and employees did not partake in any of the referenced actions in the complaint, the Commission should either dismiss the complaint or find no reason to believe a violation of the FECA or the Commission's regulations occurred with respect to the named respondents. Further, because the complaint identifies the Hillary Clinton campaign as the recipient of an alleged contribution from an impermissible source, the campaign should be required to respond to the complaint as if had been named by the complainant.

1. Project Veritas and Employees of Project Veritas are the Incorrect Respondents in This Matter

Project Veritas writes to inform the Commission that it is not responsible for any project contemplated, created, produced, hosted, or completed relating to the factual allegations referenced by ADLF. Based on the facts presented, another organization bearing a similar name, Project Veritas Action, might be an appropriate respondent to a complaint on these facts.

Project Veritas and Project Veritas Action are distinct and separate legal entities. Project Veritas is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. Project Veritas Action is a social welfare organization recognized under Section 501(c)(4) of the Internal Revenue Code. Actions taken by Project Veritas Action, or its agents, are not equivalent to actions taken by Project Veritas, or its agents.

ADLF focuses its complaint on conduct recorded in a video produced by Project Veritas Action. *See* Compl. at 2, n.3. ADLF suggests that Project Veritas violated federal election law due to ADLF's review of Project Veritas Action's video and third party Twitter feeds.

Because the complaint in question names "Jane Doe" and James O'Keefe in their capacities with Project Veritas, the named respondents are also not properly respondents to a complaint. Project Veritas, and its agents, did not conceive of, create, produce, host, complete, or otherwise engage in the complained about conduct referenced in the video. As is clearly indicated in footnote three of ADLF's complaint, Project Veritas Action, and its employees, might be the responsible actors for the complained about conduct. Project Veritas maintains no legal responsibility for the acts of another organization with a similar name.

Frivolous complaints, like the one filed by ADLF against these respondents, only serve to waste the scarce resources of the Commission and drag innocent actors into elaborate administrative investigations. *See generally* Paperwork Reduction Act of 1995, 44 U.S.C. § 3507. Should the complainant wish to pursue this matter, an appropriate and legally valid complaint should at a minimum identify correct respondents. Otherwise, the Commission should either dismiss¹ the complaint or find no reason to believe any violation of the FECA occurred since the named respondents did not engage in these acts in their capacities as agents or employees of Project Veritas.

2. Without a Response from or a Rigorous Audit of the Hillary for America Campaign, the FEC Cannot Determine if the Federal Election Campaign Act was Violated in this Matter

At controversy in this matter is a contribution by a self-proclaimed Canadian citizen in the amount of \$35.00. In the video, the self-proclaimed Canadian says that she does not have a "green card." *See HIDDEN CAM: Hillary's National Marketing Director Illegally Accepting Foreign Contribution*, YOUTUBE, Sept. 1, 2015, <https://www.youtube.com/watch?v=-qxF7Z2N7Y4> (hereinafter "Video") (Audio at 02:08). On information and belief, the undercover reporter makes a purchase of \$40 from the Hillary for America campaign. The alleged Canadian asks Molly Barker, Director of Marketing for Hillary for America, if she can give the undercover reporter money for a purchase. Video at 02:47. Barker responds "she [reporter] could make a donation." The staffer then lays out exactly what an indirect foreign national contribution is, and lets it happen. After agreeing to make the alleged Canadian's purchase, the total comes to \$75. Video at 03:51. Thus, the reporter

¹ Because the complaint fails to meet the threshold requirements of 11 C.F.R. 111.4(d)(1) and (3), it should be dismissed summarily. These regulations require naming the correct respondent who has purportedly violated the law and setting forth accurate legal claims describing a violation of the FECA.

appears to make a \$35 contribution on behalf of a person purporting to be a foreign national.

Importantly, no one in the film is able to confirm the true identity of the purported foreign national contributor or verify the person's exact citizenship and lawful presence status. The unnamed contributor could be an American citizen pretending to be Canadian, a bona fide Canadian citizen, or an individual maintaining citizenship in some other country. Under federal election law, the Hillary for America Campaign—a sophisticated political organization—bears the primary responsibility for determining the legality of the contributions it receives. 11 C.F.R. § 110.20(g).

Until the FEC requests a response from or performs an audit or investigation of the Hillary for America campaign to determine the true identity and citizenship and lawful presence status of the contributor, it will be impossible to conclude a violation of the FECA occurred. Thus, the FEC should first request a response from or commence a rigorous investigation or audit of the campaign and then examine whether any violations of the FECA occurred after receiving the response.

3. Any Actions in Controversy Involved *De Minimis* Amounts and Should be Resolved in a Future Matter Related to Proper Respondents

Federal law prohibits contributions made by foreign nationals “directly” or “indirectly.” 52 U.S.C. § 30121(a)(1)(A). Furthermore, it is illegal for a “person to solicit, accept, or receive a contribution or donation described” in the law. 52 U.S.C. § 20131(a)(2). The FECA also prohibits making contributions in the name of another person. 52 U.S.C. § 30121(b). Although an array of lesser civil penalties is available for such a violation, criminal penalties are not available unless the contribution in question exceeds \$2,000. 52 U.S.C. § 30109(d).

Penalties for the above alleged violations, if established as violations with respect to proper respondents, are primarily civil and the FECA provides for resolution through a conciliation agreement in these instances. 52 U.S.C. § 30109(a)(5)(A). Such a penalty would amount “not to exceed the greater of \$5,000 or an amount equal to any contribution...in such violation.” *Id.* For knowing and willful violations, conciliation agreements may permit a penalty that does not exceed the greater of \$10,000 or 200 percent of any contribution in controversy. 52 U.S.C. § 30109(a)(5)(B). In this instance, the contribution in controversy amounts to \$35, suggesting that dismissal or a low dollar penalty would be appropriate, such as a penalty equal to the amount of the contribution. *See generally* Matter Under Review (“MUR”) 6820 (Carter, et al.); MUR 6078 (Obama for America); MUR 5948 (Critical Health Systems of North Carolina, P.C.).

4. Conclusion

Before this Commission is a complaint filed against the improper respondents. This complaint should be dismissed. The FEC should rather wait until it has received a response from Hillary Clinton's campaign or commenced a rigorous audit or examination of the Hillary for America campaign—the actor bearing primary legal responsibility here—so that it can determine if, indeed, a foreign national contributed to the campaign. After that determination, it may examine whether ancillary violations of the FECA, as are alleged here, occurred by other organizations not named as respondents here.

We welcome working with the Commission to arrive at a just and proper conclusion in this matter.

Sincerely,



Benjamin T. Barr
Counsel for Project Veritas



Stephen R. Klein
Counsel for Project Veritas